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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/930,494

08/16/2001

Reid W. Von Borstel

1331-352

1560

23117

7590

02/05/2010

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EXAMINER

LEWIS, PATRICK T

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

02/05/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/930,494	Applicant(s) VON BORSTEL ET AL.	
	Examiner Patrick T. Lewis	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 18-36, 47 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-36 is/are allowed.
- 6) ☒ Claim(s) 1-15, 21, 23, 27, 31, 32 and 47 is/are rejected.
- 7) ☒ Claim(s) 18-20, 22, 24-26, 28-30 and 49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>07222009; 10302009; 11252009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 19, 2010 has been entered.

Applicant's Response Dated January 19, 2010

2. Claims 1-15, 18-36, 47 and 49 are pending. An action on the merits of claims 1-15, 18-36, 47 and 49 is contained herein below.

3. The provisional obviousness-type double patenting rejection of claims 1-15, 21, 23, 27, 31, 32 and 47 is maintained for the reasons of record as set forth in the Office action mailed on April 12, 2006. The terminal disclaimer filed on November 25, 2009 has been noted; however, it is DISAPPROVED. 37 CFR 1.32(a)(5) states "up to ten registered patent attorneys and/or registered patent agents"—there are more than 10 practitioners listed on power of attorney (POA). 37 CFR 1.321(c)(3) requires that a TD "include a provision that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for

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the judicially created double patenting.” The words “legal title” do not include common ownership as to equitable title.

4. The rejection of claims 1-15, 18-36 and 47-49 under 35 U.S.C. 112, first paragraph, for lack of enablement, has been withdrawn.

5. The rejection of claims 1-15, 18-32 and 37-41 under 35 U.S.C. 103(a) as being obvious in view of Page and von Borstel has been rendered moot in view of applicant’s amendment date November 25, 2009.

Conclusion

6. Claims 1-15, 18-36, 47 and 49 are pending. Claims 1-15, 21, 23, 27, 31, 32 and 47 are rejected. Claims 18-20, 22, 24-26, 28-30 and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 33-36 are allowed.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick T. Lewis whose telephone number is 571-272-0655. The examiner can normally be reached on Monday - Friday 10 am to 3 pm (Maxi Flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick T. Lewis/
Primary Examiner, Art Unit 1623

/PL/